

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PEGGY FARGANIS,

Plaintiff,

-against-

TOWN OF MONTGOMERY, DENNIS
BARNETT, MICHAEL TABACK,
KENNETH BYRNES, DANIEL THORSON,
sued in their individual capacities,

Defendants.

-----X

ANSWER

JUDGE BRIEANT
Docket No. 06-CIV.5238

DEFENDANTS DEMAND
TRIAL BY JURY

These Answering Defendants herein, TOWN OF MONTGOMERY, DENNIS BARNETT, MICHAEL TABACK, DANIEL THORSON, sued in their official capacities, by their attorneys, BOEGGEMAN, GEORGE, HODGES & CORDE, P.C., as and for an Answer to plaintiff's Complaint, allege upon information and belief as follows:

INTRODUCTION

1. These answering defendants deny that there was any violation of the civil rights of the plaintiff herein by any and/or all of these answering defendants.

PARTIES

2. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "2" of plaintiff's Complaint.

3. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "3" of plaintiff's Complaint, except these answering defendants, and each of them, admit that the individuals named are police officers employed by the Town of Montgomery.

JURISDICTION

4. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "6" of plaintiff's Complaint.

5. These answering defendants deny each and every allegation set forth in paragraph designated "5" of plaintiff's Complaint.

FACTUAL AVERMENTS

6. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs designated "7", "9", "10", "11", "12" and "13" of plaintiff's Complaint.

7. These answering defendants deny each and every allegation set forth in paragraphs designated "14", "15", "16", "17", "18", "19", "20" and "21" of plaintiff's Complaint.

8. These answering defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph designated "8" of plaintiff's Complaint, and respectfully refer all questions of law to the Honorable Court.

CAUSES OF ACTION

9. These answering defendants repeat, reiterate and reallege each and every response previously set forth above with the same force and effect as if fully set forth at length herein in responding to paragraph designated "22" of plaintiff's Complaint.

10. These answering defendants deny each and every allegation set forth in paragraph designated "23" of plaintiff's Complaint.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE

11. That this Court lacks jurisdiction over the person of these answering defendants, and each of them.

AS AND FOR A SECOND, SEPARATE AND COMPLETE DEFENSE

12. That whatever damages were sustained by the plaintiff herein were caused and/or occasioned by reason of the carelessness, recklessness, negligence and/or other culpable conduct on the part of the plaintiff.

AS AND FOR A THIRD, SEPARATE AND COMPLETE DEFENSE

13. That the Complaint fails to state of a cause upon which relief might be granted as against any and/or all of these answering defendants.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE DEFENSE

14. That any and all actions and activities on the part of the defendants herein and/or each of them were performed on a good faith basis and in the best interests of the people of the Town of Montgomery.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE

15. That any and all claims brought herein are barred by reason of the doctrine of qualified immunity.

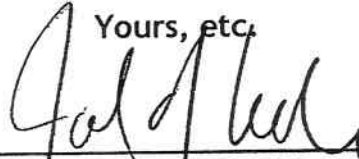
AS AND FOR A FIFTH, SEPARATE AND COMPLETE DEFENSE

16. That any and all actions on the part of the defendants herein and/or each of them were performed for a non-discriminatory reason in the best interests of the people of the Town of Montgomery.

WHEREFORE, these answering defendants, TOWN OF MONTGOMERY, DENNIS BARNETT, MICHAEL TABACK, DANIEL THORSON, sued in their official capacities, demand judgment dismissing the Complaint of the plaintiff, together with the costs and disbursements of this action.

Dated: White Plains, New York
August 21, 2006

Yours, etc.



JOHN J. WALSH, ESQ. (4092)
A MEMBER OF THE FIRM
BOEGGEMAN, GEORGE, HODGES
& CORDE, P.C.

Attorneys for the Defendants:
TOWN OF MONTGOMERY, DENNIS
BARNETT, MICHAEL TABACK,
DANIEL THORSON, sued
in their official capacities
11 Martine Avenue
White Plains, NY 10606
(914) 761-2252

TO: BERGSTEIN & ULLRICH
Attorneys for the Plaintiff
15 Railroad Avenue
Chester, NY 10918
(845) 469-1277

STATE OF NEW YORK)

SS.:

COUNTY OF WESTCHESTER)

ELISABETH M. CRUPI, being duly sworn, deposes and says:

1. I am employed by the law firm of BOEGGEMAN, GEORGE, HODGES & CORDE, P.C., counsel for the defendant, TOWN OF MONTGOMERY, DENNIS BARNETT, MICHAEL TABACK, KENNETH BYRNES, DANIEL THORSON, SUED IN THEIR OFFICIAL CAPACITIES, in the above-entitled action and I am over 18 years of age. I am not a party to this action.

2. On August 21, 2006, I served a true copy of the ANSWER, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York addressed to the last known address of all attorneys to this action, to wit:

TO: BERGSTEIN & ULLRICH
Attorneys for Plaintiff
15 Railroad Avenue
Chester, NY 10918
(845) 469-1277


ELISABETH M. CRUPI

Sworn to before me this
21ST day of AUGUST, 2006


NOTARY PUBLIC

MARIAN RENNA
Notary Public, State of New York
No. 4997090
Qualified in Westchester County
Commission Expires June 1, 2010

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

=====X
PEGGY FARGANIS,

Plaintiff,

- against -

TOWN OF MONTGOMERY, DENNIS BARNETT, MICHAEL TABACK, KENNETH
BRYNES, DANIEL THORSON, Sued in their individual capacities,

Defendants.

=====X
ANSWER
=====X

BOEGGEMAN, GEORGE, HODGES & CORDE, P.C.

Attorneys for Defendants:

TOWN OF MONTGOMERY, DENNIS BARNETT, MICHAEL TABACK, KENNETH
BRYNES, DANIEL THORSON, Sued in their individual capacities

11 Martine Avenue

White Plains, New York 10606

(914) 761-2252

FAX NO.: (914) 761-5211

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEGGY FARGANIS,

Plaintiff,

TOWN OF MONTGOMERY, DENNIS
BARNETT, MICHAEL TABACK, KENNETH
BYRNES, DANIEL THORSON, sued in their
individual capacities,

Defendants.

ANSWER

06-CV-5238

Defendants Dennis Barnettt, Michael Taback, Kenneth Byrnes and Daniel Thorson, by and through their attorney James B. Tuttle, Esq., hereby provide the following in answer to the complaint in the above-captioned action:

1. DENY knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraphs "1", "2", "5", "7", "8", "9", "10", "11", "12", "13" and "18".
2. DENY each and every allegation set forth in paragraphs "14", "15", "16", "17" and "23".
3. With respect to the allegations set forth in paragraph "19", DENY that defendant Barnett took actions towards the palintiff that were cruel, malicious or discriminatory and DENY knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations.

4. With respect to the allegations set forth in paragraph "20", DENY that any of the answering defendants engaged in discriminatory actions towards the plaintiff and DENY knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations.

5. With respect to the allegations set forth in paragraph "21", DENY that any of the answering defendants engaged in discriminatory treatment towards the plaintiff and DENY knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

6. All answering defendants are entitled to qualified immunity and demand a hearing on said defense at the earliest opportunity.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

7. The complaint fails to state a cause of action against any of the defendants in their individual capacity.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

8. All acts of omission or commission taken by the answering defendants in connection with this matter were taken in the course and scope of their employment as Town of Montgomery Police Officers and not in their individual capacity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

9. All actions taken by all of the answering defendants at the times and places
alleged in the complaint were reasonable.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

10. All actions taken by the answering defendants at the times and places alleged in
the complaint were justified.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
THE ANSWERING DEFENDANTS ASSERT AS FOLLOWS:

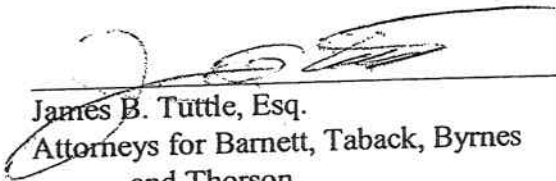
11. The injuries and damages, if any, sustained by the plaintiff were caused and/or
contributed to by the negligence and/or culpable conduct of third-parties over whom the
answering defendants had no control.

WHEREFORE, the answering defendants demand judgment dismissing the plaintiff's
complaint as against them, together with such other and further relief as to the Court may seem
just and proper.

Dated: August 18, 2006
At: Latham, NY

Yours,

THE TUTTLE LAW FIRM



James B. Tuttle, Esq.
Attorneys for Barnett, Taback, Byrnes
and Thorson
10 Century Hill Drive, Suite 4
Latham, NY 12110
Office: (518) 783-1001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEGGY FARGANIS,

Plaintiff,

06-CV-5238

TOWN OF MONTGOMERY, DENNIS
BARNETT, MICHAEL TABACK, KENNETH
BYRNES, DANIEL THORSON, sued in their
individual capacities,

Defendants.

AFFIDAVIT OF SERVICE BY MAIL


STATE OF NEW YORK :
: ss.
COUNTY OF ALBANY :

CHRISTINA L. WAGAR, being duly sworn, deposes and says:

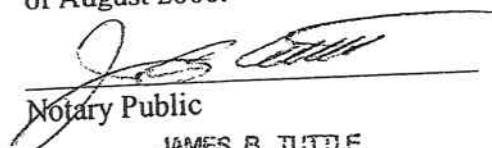
That deponent is not a party to the action, is over the age of 18 years and resides at Clifton Park, New York. That on the 18th day of August 2006, deponent served Answer of the individual defendants by regular mail in a postage-paid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States postal service in Latham, New York to the following:

Helen G. Ullrich, Esq.
Bergstein & Ullrich
Attorneys for the plaintiff
15 Railroad Avenue
Chester, NY 10918

John Walsh, Esq.
Boeggeman, George, Hodges & Corde, P.C.
Attorneys for the Town of Montgomery
11 Martine Avenue
White Plains, NY 10606


CHRISTINA L. WAGAR

Sworn to before me this 18th day
of August 2006.


Notary Public

JAMES B. TUTTLE
Notary Public, State of New York
No. 02TU5011268
Qualified in Saratoga County
Commission Expires April 19, 2007

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEGGY FARGANIS,

Plaintiff,

TOWN OF MONTGOMERY, DENNIS
BARNETT, MICHAEL TABACK, KENNETH
BYRNES, DANIEL THORSON, sued in their
individual capacities,

Defendants.

ANSWER
06-CV-5238

THE TUTTLE LAW FIRM
JAMES B. TUTTLE, ESQ.

Attorney for defendants Barnett, Taback, Byrnes & Thorson
10 Century Hill Drive, Suite 4
Latham, NY 12110
(518) 783-1001

Due and timely service of a copy of the within

is hereby admitted,

Dated,

Attorney(s) for

(NOTICE OF ENTRY)

PLEASE TAKE NOTICE that the within is a true copy of a
duly entered in the office of the clerk of the within named court on , 2001.

(NOTICE OF SETTLEMENT)

PLEASE TAKE NOTICE that an order of which the within is a true copy will be presented for settlement to
the Hon. One of the judges of the withing named Court, at on the
day of , 2001 at M.

Dated,

Yours, etc.

THE TUTTLE LAW FIRM
JAMES B. TUTTLE, ESQ.

Attorney for defendants Barnett, Taback, Byrnes & Thorson
10 Century Hill Drive, Suite 4
Latham, NY 12110
(518) 783-1001